Nos. 701 and 713

In the Supreme Court of the United States

October Term, 1949

CURTIS KOTT, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL, APPELLANT

v.

CLARENCE B. COVERT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NINA HOLLOMAN, WIDOW OF THE FEDERAL BUREAU OF INVESTIGATION AGENT, ADDISON, WEST VA., SHOT, DECEASED

v.

WALTER KOTTEAKOS

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRIEF FOR THE UNITED STATES

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CURTIS REID, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL, APPELLANT

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No. 713

NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA, PETITIONER

v.

WALTER KRUEGER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR APPELLANT AND PETITIONER

I

INVALIDATION OF ARTICLE 2 (11) WOULD HAVE GRAVE CONSEQUENCES FOR DISCIPLINE AT OVERSEAS INSTALLATIONS, FOR MAINTENANCE OF SATISFACTORY RELATIONS WITH FOREIGN COUNTRIES RECEIVING OUR TROOPS, AND FOR CONTINUED SUCCESS OF OUR PRESENT POLICY OF SEEKING IN MANY CASES TO AFFORD AN AMERICAN RATHER THAN A FOREIGN TRIAL

In an apparent effort to show that the ordinarily solemn conclusion that Congress violated the Constitution is of small moment in this case, the appellee[1] cites figures on Court of Military Appeals cases (Covert Br. 90–91) to suggest that Article 2 (11) has insignificant application—a device comparable to relying on figures from this Court to appraise the scope of federal criminal jurisdiction. She finds this provision unnecessary to the maintenance of discipline at military installations overseas (Covert Br. 88–89), rejects the policy judgment of Congress that American jurisdiction may frequently be preferable to foreign jurisdiction in cases to which Article 2 (11) applies (Covert Br. 106), and concludes, in any event, that it is an "imaginary" fear to suppose that foreign countries (though they have never done so) will be reluctant to subordinate their local jurisdiction and allow us to remove persons to the United States for trial in our district

[1] For simplicity, we shall usually refer to the "appellee" (in No. 701), but our arguments, unless otherwise indicated, are, of course, also applicable to No. 713.

courts for crimes committed on their soil (Covert Br. 104–105). These attempts to minimize the importance, necessity, and propriety of Article 2 (11) will not bear close scrutiny.

A. THE ACTUAL NUMBER OF TRIALS SHOWS THE SUBSTANTIAL IMPORTANCE OF THE PROBLEM.

Figures obtained from the Army alone show that in the six fiscal years from July 1, 1949, to June 30, 1955, a total of 2,280 civilians were tried by court-martial, or an average of just under 400 per year.[2] To be sure, as in the civilian courts, this total is made up to a considerable extent of trials for lesser offenses; only 126 of the cases included for the six years represent trials by general court-martial.[3] But this fact—like the fur-

[2] Comparable figures were not available for the Navy and Air Force; but it is clear from the available facts that they are much smaller. Thus, the Navy reports a total of 80 civilians tried by court-martial in the period from May 31, 1951, effective date of the Uniform Code of Military Justice, to the close of 1955. Even apart from these and the Air Force figures, which are not centrally compiled, the Army statistics alone refute the appellee's attempted showing of insignificance.

[3] By fiscal years and type of trial, the Army figures are as follows:

Fiscal year	Number of Civilians Tried by General Court-Martial	Number of Civilians Tried by Inferior Court-Martial	Total
1950	20	737	757
1951	26	251	277
1952	14	291	305
1953	29	284	313
1954	24	419	443
1955	13	172	185
	126	2,154	2,280

ther fact appellee notes (Covert Br. 91), that, including the two cases now before this Court, there are only six current cases of civilians ordered confined to federal penitentiaries upon conviction by courts-martial (others, of course, are confined for relatively short terms in military guardhouses)—scarcely serves to show that Article 2 (11) is inconsequential and lightly to be set aside. It reflects, instead, that although the statute reaches this Court in two highly extraordinary murder cases, it has its major impact in the deterrence and control of the less tragic infractions which could, cumulatively, effect serious impairments of military discipline and our foreign relations. We turn to these considerations so lightly dismissed by the appellee.

B. ARTICLE 2 (11) ATTEMPTS TO SOLVE DIFFICULT PROBLEMS OF DISCIPLINE AND INTERNATIONAL HARMONY

As the Court noted in *Toth* v. *Quarles*, 350 U. S. 11, 20–21, the Judge Advocate General strongly opposed as undesirable and constitutionally doubtful the extension, under Article 3 (a) of the Uniform Code, of court-martial jurisdiction to civilian ex-soldiers having "no relationship of any kind with the military" (*id.*, at 13). On the other hand, the Judge Advocate General actively sought forty years ago the provision which is now Article 2 (11) (see our main brief, pp. 34–37), and subsequent history has given increasingly

powerful testimony to the necessity and propriety of that effort.[4] For the success of our military missions in the sixty-odd nations which have received our forces with their accompanying civilian contingents would be seriously impaired by invalidation of the military control authorized in Article 2 (11). Cf. *Toth* v. *Quarles, supra,* at 22.

1. Though Congress carefully limited the peacetime jurisdiction over accompanying civilians in Article 2 (11) to foreign areas, where there is no requirement of indictment and jury trial (*In re Ross,* 140 U. S. 453; see our main brief, pp. 61–65), the appellee finds the limitation constitutionally and practically pointless, arguing (Covert Br. 66–68) that the situation of such civilians in foreign countries is not different from that of civilians residing on military installations within the

[4] In our main brief we observed (p. 45, fn. 23) that pre-1916 expressions of Judge Advocates General limiting court-martial power over civilians to wartime seemed clearly to deal only with civilians *within the United States.* The appellee states (Covert Br. 42) that, since the opinions she has invoked are only digests, our conclusion is not necessarily correct, and that inferences adverse to the Government in this case should be drawn from the fact that the full opinions were not published. We have examined the full opinions in the National Archives, where they are available to opposing counsel, and they confirm our statement. We had thought that American history, which records substantially no cases before this century of civilians accompanying the armed forces overseas in peacetime, supplied adequate confirmation.

United States or its territories. But there is a plain fallacy in this attempt to equate problems which are basically so disparate.

Together with their civilian contingents, our military units in foreign countries around the world constitute, in point of fact as well as in domestic and international law, close-knit American communities received and carefully regulated as wholes by international agreement. Our allies require and are given express assurances that *all* the members of such communities will be governed by effective American controls insuring against conduct offensive or injurious to the receiving state.[5] Not less important, and wholly apart from the need for fulfilling such assurances, the safety, integrity, and effectiveness of those in uniform require military control of those garrisoned with them.

Elsewhere in this and our main brief we emphasize the role of Article 2 (11) in making possible an American rather than a foreign trial in the many cases where the choice has been deemed desirable and has been possible as a matter of international negotiation. But the problem is a complex one and affects also a variety of situations where the local law of the receiving state is either inapplicable or ineffective and where the

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[5] See, *e. g.*, Articles II, VII (5), (6), and XIII of the NATO Status of Forces Agreement, TIAS 2846, Appendix, *infra*, pp. 35, 37–38, 41.

only practicable means of necessary control is found in the jurisdiction conferred by Article 2 (11). We cite only major areas of concern, not stopping in each case to see whether the jurisdiction of foreign courts could or should be invoked, to give some measure of the importance of Article 2 (11) to our military efforts overseas.

a. Health and welfare, ground safety, and morale are all concerns to which the jurisdiction under Article 2 (11) is important. Whether or not they wear uniforms, all those who are in fact part of our military communities abroad affect and are affected by measures governing immunization, sanitation, epidemic control, quarantines, and the like. To be effective, regulations declaring epidemic areas off-limits, or isolating diseased individuals, or imposing controls on certain on-post activities, must be enforceable by sanctions against civilians who accompany the forces voluntarily as well as against those in uniform who might have preferred to stay at home. Similarly, whether the offender be a colonel or a sergeant, the wife of one of them, or a civilian employee, the individual wielding a speeding car or an axe or a dagger, or stealing from a neighbor or colleague, is a threat which must be controllable or punishable on the scene. It clearly will not do to leave such actions wholly unpunished (and therefore undeterrable) or inadequately tried, possibly

after long delays, in a distant forum (see also *infra*, pp. 20–22).[6]

In the face of contemporary realities, it is beside the point for appellee to condemn as unchivalrous (Covert Br. 63, 86) the trial by court-martial of "unarmed" women who would otherwise be triable in the courts of England or Japan for what they did or not be triable at all. Just as Mrs. Covert and Mrs. Smith chose to accompany the armed forces overseas, some 35,000 young women are voluntarily in uniform. Nobody doubts that these women (minimum age 18), like millions of American "strong men" (Covert Br.

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[6] The appellee (Covert Br. 88, 89–90, 103) points to the fact that other Americans overseas are not subject to American jurisdiction like that under Article 2 (11). But there are several plain answers to this observation. To begin with, such persons do not live in sharply marked communities, associated and identified with the military. Foreign countries do not expect, as they expressly do in the case of our military contingents and accompanying civilians (see pp. 10, 33, 37–38, 41, and fn. 12, *infra*), that such other persons will be admitted and controlled under close, unitary, and continuous control of the American authorities responsible for them. (Note, in this connection, the undertaking of receiving States under the Status of Forces Agreement to provide, where necessary, for the members of the sending State's force, civilian component, and dependents "medical and dental care, including hospitalisation, under the same conditions as comparable personnel of the receiving State." Article IX, par. 5, *infra*, p. 41.) Conversely, from our point of view, these other persons, because they do not live as members of integrated establishments, are not ordinarily in a position to affect by their individual actions the safety, morale, effectiveness, and acceptability of a unified operation like a military force.

110–112), are subject to court-martial jurisdiction both within and without the United States. Had a WAF or an Army nurse joined one of the defendants now before the Court as an accomplice, the propriety of her trial by court-martial would have been clear. The facts which have necessitated the nation's military posture today and the statutes which implement it are not necessarily happy ones. But they serve to dispel the suggestion that a general statute, in force for forty years and answering to vital national needs, should have its constitutionality determined by the sex of the particular defendants in the cases here now.

b. Because the possibility of war today is a threat of large-scale destruction commenced with lightning speed, our garrisons around the world must live on the alert. Like those in uniform, civilian employees and dependents are instructed and drilled on their responsibilities in the event of attack. Enforceable regulations are necessary to this end in peacetime, before the attack, if the safety and effectiveness of the fighting forces themselves are not to be endangered. Civilians employed by or accompanying our armed forces in compact military communities overseas are frequently in a position to violate essential security measures. The only safeguards likely to work as a matter of practical fact are military orders, backed by the threat of punishment under military law, for the civilians whose presence neces-

sarily gives rise to reciprocal responsibilities between them and the military mission of which they are part.

c. Because our installations abroad function as American enclaves permitted by consent on foreign soil, extensive problems of supply must be dealt with by agreement. Large quantities of goods are purchased abroad or shipped from the United States for maintenance and comfort; large amounts of currency are at the disposal of American personnel; substantial postal, customs, and tax arrangements must be made. In all of these areas, the absence of close, on-the-spot regulation would open the way to black-market activities, to abuse of postal and customs exemptions, and to comparable activities productive of the frictions it is essential to avoid. As we have noted, host nations receiving American forces properly look to American military authorities for prevention and punishment of such conduct. Article 2 (11) properly provides a basis for meeting this expectation.

d. The fair and effective enforcement of military law itself requires its applicability to civilians accompanying the armed forces overseas. Closely intermingled with the uniformed members of the armed forces they accompany, civilians play the important roles of witnesses as well as defendants in military trials. Unless they remain subject to the military law governing others in the military enclave, their appearance as wit-

nesses cannot be compelled, since process requiring such attendance does not run to foreign countries for civilians not subject to military law. See Article 46, UCMJ (50 U. S. C. 621). In this and other aspects, their immunity from the law governing those they live with so intimately would present stark inequities. The airplane mechanic with sergeant's stripes, the Army nurse, the WAC stenographer are all subject to trial by court-martial—whether for the gamut of assaults, drunkenness, and sex crimes which may sap the morale of the establishment, or for the black marketeering, customs, and like violations which may injure the host nation. But, appellee says, the civilian aircraft specialist and the Army wife, working or socializing or fighting or drinking with the others, can only be controlled (whether they like it or not)[7] by foreign authorities or by

[7] Of course, the particular convicted defendant before this Court in any case will plead for the jurisdiction to which he has *not* been subjected—for court-martial if he has had a civilian trial (*Madsen* v. *Kinsella*, 343 U. S. 341), for an American trial, military or civilian, if he has had a foreign trial (see *Keefe* v. *Dulles*, 222 F. 2d 390 (C. A. D. C.), certiorari denied, 348 U. S. 952; *United States* v. *Burney*, U. S. C. M. A. No. 7750, March 30, 1956, in the Appendix to the Government's Brief in *Kinsella* v. *Krueger*, No. 713, at pp. 83–84), or, as in the two cases here now, for civilian trial in England or Japan over trial by an American court-martial. It bears mention, therefore, that in the long vistas which must be contemplated in considering a proposed constitutional limitation, these alternatives are fairly viewed from the standpoint of prospective defendants and prospective consequences rather than that of the particular parties before

the probably impracticable device of trial by a federal district court in the United States (see *infra*, pp. 20–22). We submit that the well-established power of Congress, to provide for non-jury trial in the exercise of criminal jurisdiction in a foreign country (*In re Ross, supra*) and to provide for court-martial trial of "those directly connected with" the armed forces (*Duncan* v. *Kahanamoku*, 327 U. S. 304, 313; see our main brief, pp. 31–48), amply defeats the effort to impose such a restriction.

C. WIDESPREAD TREATY ARRANGEMENTS, UNDER WHICH FOREIGN NATIONS HAVE RECOGNIZED OUR RIGHT TO EXERCISE COURT-MARTIAL JURISDICTION WITHIN THEIR BORDERS OVER CIVILIANS DIRECTLY CONNECTED WITH OUR ARMED FORCES, WOULD BE IMPAIRED TO THIS NATION'S DETRIMENT IF ARTICLE 2 (11) WERE HELD INVALID

As in the agreements with England and Japan in the two cases now before the Court, the United States has reached agreements with some sixty nations where our armed forces are stationed, recognizing our right to exercise military jurisdiction over offenses by our troops and the civilians accompanying them. Because the relevant American authority present in these foreign countries is military, it is not surprising that in these agreements the right sought and granted has permitted the exercise of *military jurisdiction*. The

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the Court. In this broader perspective, Congress probably reflected no minority view when it provided a basis for trial in American tribunals when the circumstances of international arrangements render this choice preferable and available.

British note accompanying the agreement involved in the *Covert* case reflects that such concessions by our allies ordinarily represent a "very considerable departure * * * from the traditional system and practice" (main brief, appendix, p. 79), and are not lightly made. Though the appellee treats it as a matter simply accomplished (Covert Br. 104–105), there is neither precedent nor diplomatic experience to justify the belief that these foreign nations would similarly relinquish their jurisdiction if what we proposed was not a military trial within their borders near the scene of the offense, but a civilian trial by a court in the United States.[8] And the possibility of setting up some sort of *ad hoc* American civilian courts in these foreign countries, apart from

[8] The appellee's assumption that foreign nations would lightly thus relinquish their sovereignty is clearly not based upon the attitude of our own Government. To the contrary, Section 2 of the Service Courts of Friendly Foreign Forces Act (22 U. S. C. 702; see our main brief, p. 54, fn. 28) expressly provides that the arrest and delivery of a member of a friendly foreign force to the custody of an officer of such force shall be "for trial in such service courts *within the United States* for such offenses as shall lie within the jurisdiction of the service courts of such friendly foreign force" (emphasis added). Section 2 further provides that the trial of any member of such friendly foreign force for an offense against a member of the civilian population "shall be in open court (except where security consideration forbids), *shall take place promptly in the United States* and within a reasonable distance from the place where the offense is alleged to have been committed, for the convenience of witnesses." (Emphasis added.)

being impractical and a difference in form rather than substance, could not effectively meet the appellee's fallacious claim that she is entitled to a jury trial if an American court tries her there for a crime committed there.

In short, the actual arrangements among nations today, whence international law so largely derives, demonstrate[9] that Article 2 (11) is the practicable means of providing an American rather than a foreign trial for civilians accompanying our armed forces in foreign countries and charged with offenses there. We would not wish at all to be understood to claim that trial in a foreign court is "the ultimate horrible" (Covert Br. 106), to be avoided at all costs. What we do urge, however, is that in this delicate area of international negotiation (cf. Schwartz, *International Law and the NATO Status of Forces Agreement* (1953), 53 Col. L. Rev. 1091, 1111) it would be a misfortune if Congress and the Executive found themselves powerless to arrange in appropriate cases for these concessions which so many other nations have seen fit to grant and to seek for themselves.

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[9] In a letter of February 27, 1953, to the Senate urging ratification of the Status of Forces Agreement, President Eisenhower wrote:

> The Status of Forces agreement of 1951 and the present protocol, as well as the companion agreement relating to the status of the North Atlantic Treaty Organization itself, are necessary parts of the new machinery we need to carry forward the vital program for the

To illustrate concretely the nature and practical operation of such concessions, we examine briefly the multilateral NATO Status of Forces Agreement (printed in part as an Appendix to this brief, pp. 32–42, *infra*). The key provision for our purposes, Article VII, recognizes at its outset that "*the military authorities* of the sending

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integrated defense forces of the North Atlantic Treaty Organization. These are multilateral agreements and thus provide that basis of uniformity in these fields which is essential for NATO and its integrated operations. While these agreements do not in every respect reflect the maximum desires of each country, and to that extent represent certain compromises on the part of all, it is my considered belief that they provide a workable, equitable, and desirable framework for NATO activities and peacetime NATO military operations. The early acceptance of these agreements by the NATO nations is very important to the furtherance of the NATO collective defense effort.

On July 14, 1953, in a letter responding to a request from Senator Knowland that he state his views on the importance of this Agreement, the President said:

> In my judgment, failure of the United States to ratify these agreements could seriously affect the security of the United States, for such failure could result in undermining the entire United States military position in Europe.
>
> * * * * *
>
> Ratification of these agreements would be a great forward step toward cementing the mutual security effort among the nations of the free world, and I earnestly hope that they will be ratified by the United States without reservations that would require their renegotiation.

Hearings before the Committee on Foreign Affairs, House of Representatives, 84th Cong., 2d Sess., on H. J. Res. 309, pp. 557, 558.

State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State *over all persons subject to the military law of that State* (par. 1 (a), *infra*, p. 35, emphasis added).[10] This right is exclusive "over persons subject to the military law of [the sending] State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State" (par. 2 (a), *infra*, p. 36).[11] In cases of offenses against the laws of both States, jurisdiction is concurrent, and the Agreement proceeds to provide which State, in given classes of cases, shall have "the primary right to exercise jurisdiction." This primary right is given to the "military authorities of the sending

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[10] There is, of course, no question that the appellee is within the terms of Article 2 (1) and in this sense subject to American military law. In considering which persons may constitutionally be subjected to American military law, the host of agreements like NATO Status of Forces, contrary to appellee's apparent view that they are irrelevant (Covert Br. 92 *et seq.*), are obviously significant. As we have said (Br. in Opp. to Motion to Dismiss or Affirm, pp. 9–10), this is not so because such agreements themselves *create* American constitutional power (cf. Appellee's Br. 97–102), but because this country, as a sovereign member of the community of nations, has a well-established and necessary power to make and implement such agreements. See our main brief, pp. 48–53, 61–65; and pp. 28–30, *infra*.

[11] Similarly, the receiving State has exclusive jurisdiction to offenses punishable by its law but not by the law of the sending State. Par. 2 (b), *infra*, p. 36.

State" over a member of its force or civilian component in relation to:

> (i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;
>
> (ii) offences arising out of any act or omission done in the performance of official duty. [Par. 3 (a), *infra*, pp. 36–37.]

In all other cases, the receiving State has the primary right to exercise its concurrent jurisdiction. Par. 3 (b), *infra*, p. 37.[12]

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[12] In the advice and consent to the ratification of the NATO Status of Forces Agreement, it was declared to be the sense of the Senate that the criminal jurisdiction provisions of Article VII would not constitute a precedent for future agreements (4 *U. S. Treaties* 1792, 1828), reflecting the view that, wherever possible, even broader provisions should be obtained conceding primary jurisdiction to American courts-martial. And such provisions are in fact contained in a number of other agreements. Thus, in an agreement with the Netherlands, a NATO member, effective November 16, 1954 (TIAS 3174), that Government, "recognizing that it is the primary responsibility of the United States authorities to maintain good order and discipline where persons subject to United States military law are concerned, will, upon the request of the United States authorities, waive their primary right to exercise jurisdiction under Article VII, except where they determine that it is of particular importance that jurisdiction be exercised by the Netherlands authorities." Annex, par. 3. Similarly, other NATO countries have, on a case-to-case basis, effected broad waivers of their primary right under the Agreement. *Infra*, p. 18. And certain other countries outside NATO—for example, Libya and the Philippines—have conceded to us a larger area of jurisdiction than is recognized in the Status of Forces Agreement.

The Agreement goes on, however, to provide that the State having the primary right to exercise jurisdiction "shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance" (par. 3 (c), *infra*, p. 37). This provision has been of great significance. It has been the policy of this Government, in a large majority of the instances where the problem has arisen, to seek waivers from foreign governments of their primary right to exercise jurisdiction over our nationals in uniform or accompanying our armed forces as civilians. The substantial success of this policy is attested by the fact that in the period from December 1, 1954, to November 30, 1955, out of a total of 4977 offenses subject to the jurisdiction of our NATO allies, waivers were obtained in 2840, or 57 percent.[13] The figures for members of the civilian component and dependents accompanying the armed forces are even more striking. Out of a total of 435 in this category (166 of the civilian component and 269 dependents), waivers were obtained as to 376 (141 plus 235, respectively), or 86 percent.[14]

[13] Hearings before the Committee on Foreign Affairs, House of Representatives, 84th Cong., 2d Sess., on H. J. Res. 309, p. 572.

[14] *Id.*, p. 576. Similarly, under the Protocol to Amend Article XVII of the Administrative Agreement Between the United States of America and Japan (TIAS 2848, September

We think actual experience with this international problem demonstrates strikingly the fallacy in arguing that the issue in cases of this type involves a real choice between an American civilian and an American military trial. In *Toth* v. *Quarles*, 350 U. S. 11, this Court pointed out that the court-martial jurisdiction attempted under Article 3 (a)—applying to civilian ex-servicemen who, like Toth, would almost always be within the United States when the military jurisdiction was asserted—"necessarily encroaches on the jurisdiction of federal courts set up under Article III of the Constitution" (p. 15; see also p. 19). The overseas jurisdiction under Article 2 (11) represents no such encroachment. Instead, it provides a basis upon which this country can seek and often obtain the right to try in an American tribunal offenses which would otherwise be tried in a foreign court. It merits emphasis that this right, as it exists in point of fact, is extended solely to our military tribunals, the obviously appropriate forums present in the foreign countries. Unless we are able to exercise this right, it must be waived in favor of the jurisdiction of the foreign country's courts. See Status of Forces Agreement, Article VII, par. 3

29, 1953, 4 *U. S. Treaties* 1846) (which was modeled upon the NATO Status of Forces Agreement), in the period from December 1, 1954, to November 30, 1955, out of 366 cases involving members of the civilian component and dependents, waivers were obtained in 355, some 97%. *Id.*, p. 608.

(c). The possibility that some sixty agreements could be renegotiated to provide for an unprecedented arrangement under which foreign nations would waive their local jurisdiction in favor of a jury trial in the United States, far from the scene of the offense, seems quite slim.[15] We submit, in any event, that this Government is not *required* to relinquish the American jurisdiction it enjoys under the widespread net of international agreements now in force, a jurisdiction which has proved acceptable to the other nations. The exercise of this jurisdiction by military tribunals, the procedures of which have been carefully fashioned by Congress to insure due process for the millions of Americans unquestionably subject to them, is fully authorized by the Constitution.

D. EVEN ON THE UNLIKELY ASSUMPTION THAT FOREIGN COUNTRIES WOULD WAIVE THEIR LOCAL JURISDICTION FOR THIS PURPOSE, JURY TRIAL IN THE UNITED STATES WOULD ORDINARILY BE IMPRACTICABLE

In addition to finding, on her own, that foreign trials would be perfectly acceptable in the generality of cases over which foreign courts (but for our agreements) would normally exercise jurisdiction, the appellee maintains (Covert Br. 103–107) that the only alternative available for providing an American trial is in a civilian court

[15] We have noted in our main brief (p. 46) one express indication of the view which could readily have been anticipated—that for certain crimes within its borders, if it is to waive its own normal jurisdiction, a foreign country would expect the trial to be held there. And see the views of this country reflected in our statute quoted in fn. 8, p. 53, *supra*.

in this country, with a jury. This alternative might occasionally be feasible in the case of very grave and perhaps spectacular offenses, but it cannot ordinarily serve as a practicable solution for the problems now handled under Article 2 (11).

While they are deprecated by the appellee (Covert Br. 107) as crass considerations of "economy," it seems clear that there would be enormous, frequently insurmountable difficulties in bringing witnesses to the United States for trial. The attendance of foreign witnesses in this country could not be compelled; on the other hand, under our international agreements, foreign governments often undertake to assist in producing their people as witnesses for our trials there.[16] Even if the Government could effectively handle this problem on its own behalf in the generality of cases, at considerable cost, the expense and frequent impossibility of bringing defense witnesses so far from the scene of the crime would be an obstacle defendants might well find intolerable; on the other hand, Article 46 of the Uniform Code (50 U. S. C. 621) assures to the defense an equal opportunity to obtain witnesses. And there would clearly be a serious loss in military efficiency and in morale if, for the fairly substantial number of cases involved (*supra*, p. 3), uni-

[16] See, *e. g.*, TIAS 3426, October 23, 1954 (Germany); TIAS 3107, September 9, 1954 (Libya); TIAS 2964, May 22, 1953 (Ethiopia); TIAS 2295, May 8, 1951 (Iceland); cf. NATO Status of Forces Agreement, Article VII (6) (a), *infra*, p. 38.

formed and civilian personnel from overseas had regularly to be taken from their work and brought here as witnesses in the district courts.

The result of the appellee's suggestion would inevitably be a practical inability, at least in many of the lesser cases, to provide for any American trial of any kind. Cf. *In re Ross*, 140 U. S. 453, 464–465. The appellee's conclusion that a foreign trial should, therefore, be acceptable is not without supporters. On the other hand, there are those who argue that we have gone too far already in tolerating foreign jurisdiction over our nationals.[17] This is not the forum, of course, for resolving such difficult issues of international policy. Nevertheless, if the restriction for which the appellee contends were accepted, there would be a resolution *pro tanto* on constitutional, not policy, grounds. For if Article 3 (11) is held invalid, it becomes highly unlikely, at least for the foreseeable future, that there will be exercised over civilians accompanying our armed forces the American jurisdiction in foreign countries which those countries have agreed to recognize and which they, in turn, have obtained for themselves. That result may or may not be desirable, but it is not one compelled by the Constitution.

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[17] See, for example, the sharp opposition to acceptance of the NATO Status of Forces Agreement. *E. g.*, 99 Cong. Rec. 4979–80, 8731 *et seq.* See also the current Bow Resolution, H. J. Res. 309, 84th Cong., 1st Sess. (Hearings, *supra*, note 13), which would require that we seek elimination of such foreign jurisdiction. See also fn. 12, *supra*, p. 17.

II

THE WAR POWER AND THE POWER TO PROVIDE FOR TRIAL IN A FOREIGN COUNTRY WITHOUT A JURY, AS WELL AS THE POWER TO MAKE RULES GOVERNING THE LAND AND NAVAL FORCES, ARE CLEARLY RELEVANT IN SUSTAINING ARTICLE 2 (11)

A constant premise running through the appellee's brief is that, peculiarly for purposes of this case, the power under Article I, Sec. 8, Cl. 14, of the Constitution, "To make Rules for the Government and Regulation of the land and naval Forces," must be read in a sealed vacuum. She acknowledges that the war power has in the past sustained provisions for trial by court-martial of civilians "directly connected" with the armed forces, but declares this power irrelevant here. She recognizes that *In re Ross*, 140 U. S. 453, established that an American tribunal exercising criminal jurisdiction in a foreign country for an offense in that country—jurisdiction which would normally be exercised by a foreign court—need not be a constitutional court and need not proceed by indictment or with a jury. But the constitutional rule of that case, recognized as closely in point by several authorities which have considered it in the present connection,[18] she de-

[18] See *United States* v. *Burney*, U. S. C. M. A. No. 7750, March 30, 1956, in the Appendix to our Brief in *Kinsella* v. *Krueger*, No. 713, pp. 55–58; the District Court's opinion in *Krueger*, R. 16–17; and Morgan, *Court-Martial Jurisdiction over Non-Military Persons under the Articles of War*, 4 Minn. L. Rev. 79, 96–97 (1920).

clares (Covert Br. 84–85) to be utterly irrelevant because it does not amend the phrase "land and naval Forces" in Article I, Sec. 8, Cl. 14. We submit that this attempted splintering of the Constitution is fallacious, and that the constitutional provisions we have invoked, together with the "land and naval Forces" clause of Article I, sustain the statute under attack, separately and in combination.[19]

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[19] We note in passing appellee's suggestion (Covert Br. 39, 102) that the Necessary and Proper Clause, since *Toth* v. *Quarles*, *supra*, can have no bearing on the exercise of the power under Article I, Sec. 8, Cl. 14, to make rules for the government and regulation of the land and naval forces. Long ago, however, this Court plainly declared that the Necessary and Proper Clause is to be read in aid of Article I, Sec. 8, Cl. 14, as it is read with the other Article I powers, and this would seem to be required by the plain constitutional language in Clause 18 conferring power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers," without exception. *Johnson* v. *Sayre*, 158 U. S. 109, 114. We find nothing in the *Toth* opinion which overrules this view and declares that the Necessary and Proper Clause must be read as if it referred to all of "the foregoing Powers" except that conferred by Clause 14. To be sure, this Court declared in *Toth* (p. 23), quoting *Anderson* v. *Dunn*, 6 Wheat. 204, 230–231, that the power under Clause 14 must be limited to "*the least possible power adequate to the end proposed.*" Mindful of that sharply restrictive language, we nevertheless believe that there remains with respect to Clause 14, as with the other powers of Congress, at least some scope for the exercise of the legislative judgment contemplated by the Necessary and Proper Clause. And it is our effort here to show that the judgment in this instance finds ample sanction in Clause 14, together with the other sources of power we invoke.

Among the cases upholding court-martial jurisdiction over civilians, we have referred to such instances as the trial of a Quartermaster employee in Camp Jackson, South Carolina (*Hines* v. *Mikell*, 259 Fed. 28 (C. A. 4), certiorari denied, 250 U. S. 645), and the trial of another Quartermaster employee on the Mexican border where the troops he was with were concerned with the intermittent raids of bandits (*Ex parte Jochen*, 257 Fed. 200 (S. D. Tex.)). Both of these cases, cited with approval by this Court as reflecting a "well-established" power (*Duncan* v. *Kahanamoku*, 327 U. S. 304, 313, fn. 7), arose during World War I. On this ground, the appellee seeks to explain them away, along with many others. They involved, she says, the exercise of the war power, and are, of course, clearly correct on that ground (Covert Br. 51). Here, however, she claims (Covert Br. 77–78) that the war power cannot possibly be relevant.

We note and emphasize in this connection that, as the appellee concedes (Covert Br. 75), the provision in Clause 14 of power to make rules for the government and regulation of the land and naval forces makes no reference to war or peace. And, of course, this provision is fairly to be read with the closely related and immediately preceding powers to declare war (Cl. 11), to raise armies (Cl. 12), and to provide a navy (Cl. 13). See *Ex*

parte Gerlach, 247 Fed. 616, 618 (S. D. N. Y.). In this light, the brief comments the appellee makes (Covert Br. 77–78) wholly fail to show how the war power may be dismissed from *these* cases while it serves to explain and justify the cases she accepts. In the latter cases, because a declared war was in progress, civilians were tried by court-martial *within the United States*, where the civilian courts were open and peacefully functioning, and where such persons would normally have a civilian trial by an American jury. Today, in a climate of potential danger, our forces are in many foreign lands, and the civilians accompanying them are subject to trial by American courts-martial for offenses which would normally be triable in foreign courts, often in foreign tongues, by foreign procedures. The two situations, both formerly covered by Article 2 (d) and now separated in Articles 2 (10) and 2 (11) of the Uniform Code, were distinguished by Congress, for reasons of clarity, to deal with different aspects of war and preparations for war.[20] Time

[20] We stop here to disclaim our opponent's approval in *Kinsella* v. *Krueger*, No. 713, Resp. Br. pp. 12–16, of our omission to bring before this Court for review the contention that Article 2 (10) of the Uniform Code also justifies court-martial jurisdiction in that case. In that case, we invoked the extraordinary procedure of certiorari before judgment, not only because the validity of Article 2 (11) is important, but also, and in large measure, because the *Covert* case is here presenting the problem. See our petition for certiorari, pp. 5–7. In the *Covert* case, only Article 2 (11) had been raised in the District Court and brought here. Moreover,

continues to vindicate its judgment that both situations are appropriate for court-martial jurisdiction and both draw significant support from the war power.

Surely, the answer to our question here cannot turn on whether the danger in South Carolina in 1918 was greater than in England in 1953, jet-minutes from everywhere in Europe, or in Japan in 1952, on the troubled coasts of Asia and near the fighting in Korea. It is enough that the war power is in strenuous and costly operation when large military establishments with their civilian contingents are posted around the world. And the powers which justify court-martial jurisdiction over civilians within the United States in time of declared war are sufficient to sustain such jurisdiction overseas, in the circumstances of the

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in *Krueger*, the District Court does not appear to have ruled on Article 2 (10), and held that Article 2 (11) sufficiently sustained court-martial jurisdiction. Indeed, since, as respondent's discussion in *Krueger* reveals (Krueger Br. 13–16), the question of when our forces are "in the field" within the meaning of Article 2 (10) involves a largely factual analysis, it is questionable whether the materials before the District Court were adequate for decision on this point.

The fact remains, however, that when Mrs. Smith, the defendant in the *Krueger* case, killed her husband in Japan, hostilities were in progress in nearby Korea. Japan was in fact a staging area for that conflict and a base for aerial missions. There is, in our view, substantial ground for holding Article 2 (10) applicable. In the event of reversal in that case on the ground that Article 2 (11) is invalid, that question should remain open on the remand.

post-World War II world, over civilians intimately and relatively permanently connected with our armed forces there.

B. THE POWER TO EXERCISE CRIMINAL JURISDICTION WITHOUT A JURY IN A FOREIGN COUNTRY FOR A CRIME COMMITTED THERE

Foregoing the unprofitable effort to seek overruling of the unanimous decision in *In re Ross*, 140 U. S. 453, which has been approved and never doubted in the sixty-five years since its rendition,[21] the appellee dismisses briefly (Covert Br. 84–86) our argument that it is squarely applicable here. The distinction, she says, is that *In re Ross* concerned an overseas trial without a jury *in a consular court*, and that Article I, Sec. 8, Cl. 14, does not state that similar jurisdiction may be conferred upon a court-martial trying an offense in a foreign country.

But the Constitution says nothing whatsoever about consular courts, or indeed about any kind of American court overseas. Clearly, any attempt to find a literal statement in the Constitution establishing the jurisdiction upheld in *In re Ross* must fail. Nevertheless, the principles there announced are quickly stated and readily seen to apply here. Those principles are (1)

[21] See, *e. g.*, *Ex parte Bakelite Corporation*, 279 U. S. 438, 451, referring to the "well recognized" power to exercise criminal jurisdiction in foreign countries without a jury sustained in *In re Ross*.

that the United States, like other sovereigns in a multi-nation world, is empowered to "make treaties providing for the exercise of judicial authority in other countries by its officers appointed to reside therein" (140 U. S. at 463) and (2) that tribunals so constituted may adjudicate criminal liability for the most serious offenses without indictment or trial by jury (*id.* at 463-465). Under these principles, Congress may surely employ the courts-martial it is empowered to create by Article I, Sec. 8, Cl. 14, to exercise judicial authority in other countries.

There is no basis for a constitutional distinction in the fact that *Ross* involved civilian consular officials while, for purposes of civilians accompanying the armed forces overseas, similar jurisdiction is conferred upon regularly constituted and carefully regulated military tribunals. If anything, the propriety of military jurisdiction of this type would seem clearer than that of the *ad hoc* consular tribunal. As we have shown, civilians accompanying the armed forces overseas live intimately with and as part of the military establishment; the military has daily responsibility for their welfare and their conduct; their actions may impede or injure directly and immediately the mission of the military force. There is no such continuing relationship between a con-

sular officer and an American, even a seaman, abroad. Moreover, the closely safeguarded system of military justice—with its provisions for careful preliminary investigation (Article 32, UCMJ, 50 U. S. C. 603), legally trained judicial officers and counsel for both sides (Articles 26, 27, and 38, 50 U. S. C. 590, 591, and 613), and other protections designed by Congress to protect the millions of Americans subject to the system—undoubtedly compares most favorably with that of the consular tribunals sustained in *Ross*.[22]

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[22] While the procedures followed by the consular court in *Ross* are not detailed in the opinion, it is there noted that arrest, arraignment, and trial were authorized on the basis of facts within the consul's own knowledge, "or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister" (140 U. S. at 469). With this compare the requirements under the Uniform Code that before charges are referred for trial to a general court-martial—*i. e.*, before a trial which may result in confinement for over six months—there must be (1) a thorough and impartial investigation at which the accused is entitled to be represented by counsel, to cross-examine available witnesses against him, "and to present anything he may desire in his own behalf" (Article 32, *supra*), opportunities which do not exist, it may be noted, before a grand jury, and (2) a reference by the convening authority "to his staff judge advocate or legal officer for consideration and advice" (Article 34, 50 U. S. C. 605).

The appellee refers (Covert Br. 112–116) to cases where the Court of Military Appeals has *reversed* convictions as showing the inadequacy of military justice. Obviously, a similar culling from the opinions of this or any other appellate court could lead to similar animadversions against civilian justice.

Respectfully submitted.

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APPENDIX

The NATO Status of Forces Agreement (TIAS 2846) provides in part as follows:

ARTICLE I

1. In this Agreement the expression—

(*a*) "force" means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connexion with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units or formations shall not be regarded as constituting or included in a "force" for the purposes of the present Agreement;

(*b*) "civilian component" means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located;

(*c*) "dependent" means the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her for support;

(*d*) "sending State" means the Contracting Party to which the force belongs;

(*e*) "receiving State" means the Contracting Party in the territory of which

the force or civilian component is located, whether it be stationed there or passing in transit;

(*f*) "military authorities of the sending State" means those authorities of a sending State who are empowered by its law to enforce the military law of that State with respect to members of its forces or civilian components;

(*g*) "North Atlantic Council" means the Council established by Article 9 of the North Atlantic Treaty or any of its subsidiary bodies authorised to act on its behalf.

2. This Agreement shall apply to the authorities of political sub-divisions of the Contracting Parties, within their territories to which the Agreement applies or extends in accordance with Article XX, as it applies to the central authorities of those Contracting Parties, provided, however, that property owned by political subdivisions shall not be considered to be property owned by a Contracting Party within the meaning of Article VIII.

Article II

It is the duty of a force and its civilian component and the members thereof as well as their dependents to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of the present Agreement, and, in particular, from any political activity in the receiving State. It is also the duty of the sending State to take necessary measures to that end.

ARTICLE III

1. On the conditions specified in paragraph 2 of this Article and subject to compliance with the formalities established by the receiving State relating to entry and departure of a force or the members thereof, such members shall be exempt from passport and visa regulations and immigration inspection on entering or leaving the territory of a receiving State. They shall also be exempt from the regulations of the receiving State on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State.

2. The following documents only will be required in respect of members of a force. They must be presented on demand:

(*a*) personal identity card issued by the sending State showing names, date of birth, rank and number (if any), service, and photograph;

(*b*) individual or collective movement order, in the language of the sending State and in the English and French languages, issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organisation and certifying to the status of the individual or group as a member or members of a force and to the movement ordered. The receiving State may require a movement order to be countersigned by its appropriate representative.

3. Members of a civilian component and dependents shall be so described in their passports.

4. If a member of a force or of a civilian component leaves the employ of the sending State and is not repatriated, the

authorities of the sending State shall immediately inform the authorities of the receiving State, giving such particulars as may be required. The authorities of the sending State shall similarly inform the authorities of the receiving State of any member who has absented himself for more than twenty-one days.

5. If the receiving State has requested the removal from its territory of a member of a force or civilian component or has made an expulsion order against an ex-member of a force or of a civilian component or against a dependent of a member or ex-member, the authorities of the sending State shall be responsible for receiving the person concerned within their own territory or otherwise disposing of him outside the receiving State. This paragraph shall apply only to persons who are not nationals of the receiving State and have entered the receiving State as members of a force or civilian component or for the purpose of becoming such members, and to the dependents of such persons.

* * * * *

Article VII

1. Subject to the provisions of this Article,

(*a*) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

(*b*) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their

dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2.—(*a*) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(*b*) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

(*c*) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(*a*) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

(i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;

(ii) offences arising out of any act or omission done in the performance of official duty.

(*b*) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(*c*) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

5.—(*a*) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(*b*) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(*c*) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the send-

ing State, remain with that State until he is charged by the receiving State.

6.—(*a*) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(*b*) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7.—(*a*) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

(*b*) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent

the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

(*a*) to a prompt and speedy trial;

(*b*) to be informed, in advance of trial, of the specific charge or charges made against him;

(*c*) to be confronted with the witnesses against him;

(*d*) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;

(*e*) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;

(*f*) if he considers it necessary, to have the services of a competent interpreter; and

(*g*) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial.

10.—(*a*) Regularly constituted military units or formations of a force shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the receiving State. The military police of the force may take all appropriate measures to ensure the

maintenance of order and security on such premises.

(*b*) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the force.

11. Each Contracting Party shall seek such legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of other Contracting Parties, and the punishment of persons who may contravene laws enacted for that purpose.

* * * * *

Article IX

1. Members of a force or of a civilian component and their dependents may purchase locally goods necessary for their own consumption, and such services as they need, under the same conditions as the nationals of the receiving State.

2. Goods which are required from local sources for the subsistence of a force or civilian component shall normally be purchased through the authorities which purchase such goods for the armed services of the receiving State. In order to avoid such purchases having any adverse effect on the economy of the receiving State, the competent authorities of that State shall indicate, when necessary, any articles the purchase of which should be restricted or forbidden.

* * * * *

5. When a force or a civilian component has at the place where it is stationed inadequate medical or dental facilities, its members and their dependents may receive medical and dental care, including hospitalisation, under the same conditions as comparable personnel of the receiving State.

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ARTICLE XIII

1. In order to prevent offences against customs and fiscal laws and regulations, the authorities of the receiving and of the sending States shall assist each other in the conduct of enquiries and the collection of evidence.

2. The authorities of a force shall render all assistance within their power to ensure that articles liable to seizure by, or on behalf of, the customs or fiscal authorities of the receiving State are handed to those authorities.

3. The authorities of a force shall render all assistance within their power to ensure the payment of duties, taxes and penalties payable by members of the force or civilian component or their dependents.

4. Service vehicles and articles belonging to a force or to its civilian component, and not to a member of such force or civilian component, seized by the authorities of the receiving State in connexion with an offence against its customs or fiscal laws or regulations shall be handed over to the appropriate authorities of the force concerned.

Article XIV

1. A force, a civilian component and the members thereof, as well as their dependents, shall remain subject to the foreign exchange regulations of the sending State and shall also be subject to the regulations of the receiving State.

2. The foreign exchange authorities of the sending and the receiving States may issue special regulations applicable to a force or civilian component or the members thereof as well as to their dependents.